IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2006

CORAM:
THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P. No.6228 of 1995 & W.P.M.P. No.10088 of 1995

Tamilzhaga Kooturavu Veettu Vasathi
Sanangalin Seyalalargal Association
represented by its President
14-A East Chittirai Street
Madurai .. Petitioner

vs.

The Registrar of Cooperative Societies (Housing)
Madras - 600 017 .. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari as stated therein.

For petitioner Mr. R. Arumugam for M/s. Aiyar & Dolia
For respondent Mr. I. Paranthaman, Govt. Advocate

O R D E R

The writ petition has been filed by the petitioner union seeking a writ of certiorari, calling for records on the file of the respondent relating to the impugned circular bearing No.R.C.1/95/C4 dated 22.02.1995 and to set aside the same.

2. The petitioner association is a registered Union under the provisions of the Trade Union Act, 1926. There are nearly 900 employees in different categories in 165 Taluk Cooperative Housing Societies (in short "the Societies"). The main object of the Societies is to extend housing loans to the poor people in rural areas. The employees of the Societies are eligible to become members in the petitioner union. The petitioner union represents the interest of the employees working in the Societies. Since there is no other effective body to represent the grievances of the employees of the Societies, the petitioner union has filed this writ petition on behalf of the employees of the Societies.

3. It is the case of the petitioner union that the pay scale, other allowances and benefits to the employees of the Societies were not revised for several years despite repeated demands. Whereas in case of the District Urban Cooperative Housing Societies in Tamil Nadu, employees' wages, allowances and other benefits were revised by way of entering into

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settlements under Sections 18(1) and 12(3) of the Industrial Disputes Act. Aggrieved by the non-revision of pay scale, allowances and other benefits, the petitioner union made several representations to the respondent expressing the grievances of its member employees. In turn, the respondent directed the employees of Societies to improve their work by achieving higher target of recovery of loan dues from the members of the Societies. Accordingly, the employees worked hard and achieved 52% of the recovery of loans in a short period during 1994. Impressed by the performance of employees, the respondent issued a Circular bearing No.8530/94 dated 08.06.1994 directing the Deputy Registrar of Cooperative Societies (Housing) to allow all the Special Officers of Societies to enter into 18(1) settlement in respect of wage revision and other benefits, after taking into account the financial position of the Societies. Consequently, the Deputy Registrar of Cooperative Societies (Housing) issued a Circular bearing no.3151/94 dated 09.06.1994 directing all the Societies throughout the State to submit the proposals containing the wage revision, allowances and other benefits to be extended to their employees for his approval.

4. In response, 165 societies submitted their written proposals for approval and the same were duly approved by the Deputy Registrar of Cooperative Societies (Housing). Subsequently, each Society entered into 18(1) settlement with its employees to revise their wages and other allowances on 21.06.1994 to be given effect from 01.04.1993. It was agreed that the operation of the settlement would be in force for a period of three years from 01.04.1993. The terms of the settlement were fully implemented and acted upon by which the employees are receiving wages and other benefits as per the settlement.

5. It is the further case of the petitioner union that during the existence of this 18(1) settlement, the respondent issued the impugned Circular dated 22.02.1995 under Section 181 of the Tamil Nadu Cooperative Societies Act, 1983, (in short "the Act") unilaterally reducing the wage scales, allowances and other benefits of the employees of Societies. According to the petitioner union, the impugned Circular of the respondent is against the existing 18(1) settlement and it adversely affects all the employees working in 165 Societies. In the impugned circular, it is referred that the respondent had appointed a Committee and the said Committee submitted its report. But, according to the petitioner union, neither the petitioner union nor its members are aware of the constitution of any Committee and other details such as the terms of reference and also the said Committee did not hear them and no opportunity was given to them also and even the copies of proceedings and the report of the said Committee were not furnished to the petitioner union and thus, the present impugned circular based on the said Committee's report is illegal and bad in law.

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6. The main contention put forth by the petitioner union is that based on the impugned Circular, the monthly salary of the employees of the Societies is reduced adversely from the existing salary, i.e from Rs.5,161/- to Rs.3,375/- for Secretary, from Rs.3,993/- to Rs.2,690/- for Accountant, Rs.3,535/- to Rs.2,275/- for clerk and from Rs.2,378/- to Rs.1,293/- for Assistant. Aggrieved by the impugned Circular, the petitioner association has field this petition invoking the extra-ordinary jurisdiction of this Court.

7. The respondent has filed his counter and contended that in his direction bearing R.C. No.27271/81 Kl dated 13.09.1982 under Section 119-A of the erstwhile Tamil Nadu Cooperative Societies Act, 1961, he prescribed pattern of staff and salary to both Taluk and Urban Cooperative Housing Societies and this Court, by its order dated 26.09.1990 in W.P. No.8729 of 1992, has ordered that it is open to the Registrar of Cooperative Societies (Housing), Madras, to issue fresh orders prescribing the pattern for staff and salary of the employees of the Cooperative Housing Societies if he chooses in accordance with law and hence, he had appointed a Committee to go into the pay scales of the Societies; the Committed had given its report based on which he had issued direction under Section 181 of the Act in R.C. No.17864/90-C4 dated 12.10.1990, prescribing norms for the staff strength and scale of pay for each category and also other benefits like Leave Travel Allowance for a period of five years from 01.03.1990 to 28.02.1995; at the completion of five years, directions were issued regarding the staffing pattern and pay scale; a Committee was appointed to regulate the pay structure of the Societies and in the meanwhile, various representations were received from the staff associations by the Societies for the revision of their pay structure forthwith considering the inflationary trends; therefore, pending finalisation of the recommendations of the Committee appointed, as an interim measure, instructions were issued to the Deputy Registrars (Housing), separately to permit the Special Officers of the Societies to enter into an agreement with the employees of their Societies with the conditions that:

a. increase of the pay should be 30% to 40% of the basic pay in respect of Societies which have not adopted the Registrar of Cooperative Societies directions and 60% to 80% of basic pay to the Societies which have adopted the directions and other allowances would be on par with the employees of the State Government.

b. an undertaking in writing should be obtained from the employees whose pay has been revised, to the effect that they will abide by the directions to be issued by the Registrar (Housing), based on the recommendation of the Committee.

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c. the revision would be subject to the financial condition of the Societies

and accordingly, the Committee has submitted its report and directions were issued under Section 181 of the Act and the Regional Deputy Registrars (Housing) were requested to regulate the scales of pay of the employees of Societies according to the directions issued and report compliance and as such, whatever the benefits given are interim in nature which are binding on the conditions stipulated as per the directions of the respondent to enter into a settlement.

8. Mr. Arumugam, learned counsel for the petitioner union has contended that:

a. when there is an existing 18(1) settlement, the respondent has committed illegality in issuing the impugned Circular;

b. the Registrar has no powers to issue a Circular to nullify an existing 18(1) settlement as per the judgment of a Division Bench of this Court;

c. when the respondent himself had issued a Circular directing all the Societies to implement the 18 (1) settlement and to give effect to the revision of wages and other benefits, he cannot go back against his own Circular;

d. on the basis of the first Circular, the 18(1) settlement was entered into and given effect from 01.04.1993 for a period of three years and when such a settlement is in force, the respondent cannot issue the present impugned Circular which is a mala fide one and thus, the respondent had committed illegality as the employees are already enjoying the benefit of 18(1) settlement;

e. the respondent has committed an error in issuing the impugned Circular relying on the report of the Committee said to have been constituted to examine the issue of streamlining the pay structure, without affording opportunity to the employees and therefore, the impugned Circular is bad in law;

f. the respondent has failed to see that since 01.07.1993, there has been no society in which members' loan outstanding is to the extent of Rs.3 crores and above, and as such, the division of categories made is irrational and the reduction of Dearness Allowance has nothing to do with the continuous loss in any other society and no public interest is involved in revising the wages of the employees and no other reasons are involved as contemplated under Section 181 of the Act and

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therefore, the impugned Circular has to be necessarily quashed;

g. the earlier circular and direction issued by the respondent to enter into 18(1) settlement has been concluded and given effect to and the revision of wages, allowances and other benefits also have been implemented and the said settlement was in force for three years. The Committee's recommendations and revision will be effected only after the expiry of the settlement and during the existence of the settlement, the impugned Circular cannot be sustained; and

h. the benefits of 18(1) settlement have been given not by any mis-representation but they were duly considered and therefore, whatever the amount paid cannot be recovered.

9. In support of his contentions, he has relied on a judgment of the First Bench of this Court reported in 1992 (1) LLJ 747 in the case of Tiruchirapalli Hirudayapuram Co-op Bank Employees Union etc. vs. Joint Registrar of Co-op Societies, Tiruchirapalli, etc. in which the relevant portion reads as under: (Paras 1 & 2)

> ". . .We are only called upon to go into the legal propriety of the proceedings impugned in these cases whereby the settlements are sought to be nullified. Whatever be the nature of the factors alleged as vitiating the settlements, can the respondents by the proceedings impugned, given an adjudication over the settlements and unilaterally nullify them, is the question that alone comes up for consideration by us. Suffice it to point out that what the respondents have done is not only unorthodox, but also not fitting in with any precept of law. The respondents cannot by issuing the proceedings impugned, adjudicate over the settlements and unilaterally set at naught the settlements apparently fitting in with the provisions of the Act. There is a total lack of jurisdiction and competency in law in this regard. This factor alone, in our view, should weigh with us for purposes of deciding these cases. There is no need for us to travel beyond this.

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> . . .Such a settlement is not at all falling within the ambit of Section 153 of Act 30 of 1983. Learned Advocate General would submit that there could be examination of the resolutions or the decisions of the Cooperative Societies authorising the entering into such settlements pursuant to the exercise of power under Section 153 of Act 30 of 1983 and the Court must view the impugned proceedings as tending to achieve this end only. We are unable to accept this line of thinking.. . ."

10. Per contra, the learned counsel for the respondent has contended that the revision of pay structure and direction to enter into 18(1) settlement was issued, pending finalisation of the recommendations of the Committee appointed, subject to certain conditions and accordingly, the Committee had submitted a report and the Circular under challenge has been issued as per the direction under Section 181 of the Act and as such, there is no infirmity with the Circular and it is only to streamline the pay structure and prescribe the norms for the staff strength and scale of pay, the Committee was appointed based on which the Circular under challenge is issued and the earlier Circular was only an interim and conditional order.

11. Heard both sides.

12. In the instant case, as per the first Circular dated 09.06.1994 directions were issued by the respondent based on which 18(1) settlement was entered into between the employees and the Societies and it was given effect to and all the benefits were granted. While so, the impugned Circular has been issued when the subsisting settlement is in force. Therefore, i am of the view that the judgment cited by the counsel for the petitioner (supra) is squarely applicable to the case on hand, as, in the said judgment, the First Bench had quashed the impugned order on the ground that the Joint Registrar did not have jurisdiction to pass an order nullifying the 18(1) settlement. Following the same, I hold that the respondent had passed the order under challenge without jurisdiction and as such, it cannot nullify the settlement arrived at under Section 18(1) of the Industrial Disputes Act.

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In the light of what is stated above, the impugned Circular insofar as the portion nullifying the settlement arrived at under Section 18(1) of the I.D. Act shall not be in force to the prejudice of the petitioner union. Accordingly, impugned Circular is quashed and the writ petition stands allowed. Consequently, connected W.P.M.P. No.10088 of 1995 is closed. No costs.

cad

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

The Registrar of Cooperative Societies (Housing)
Madras - 600 017

AVM(CO)
SR/27.11.2006

order in
W.P. No.6228 of 1995

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